

1
2
3
4
5
6
7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
9

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 RICHARD LEE CANTERBURY,

14 Defendant.
15

Case No. 2:16-cr-00107-KJD-PAL

ORDER

16 Presently before the Court is Defendant's Motion to Replace Trial Judge and Magistrate
17 Judge (#91). Under 28 U.S.C. §§ 144 and 455 (b)(1), a judge is required to disqualify himself if his
18 impartiality might reasonably be questioned, or if he has a personal bias or prejudice for or against a
19 party. Bias or prejudice justifying recusal must arise from an extrajudicial source, and not from
20 conduct or rulings made during the course of the proceeding. See Toth v. Trans World Airlines, 862
21 F.2d 1381, 1387–88 (9th Cir. 1988). The claimant must set forth an affidavit stating "the facts and
22 the reasons for the belief that bias or prejudice exists." 28 U.S.C. § 144.

23 First, Defendant fails to supply an affidavit as is required by 28 U.S.C. § 144, and
24 alternatively fails to sign the motion itself under penalty of perjury. Even if Defendant's motion had
25 complied with procedural requirements, he fails to put forth any facts that show either the Magistrate
26 Judge's or the District Judge's impartiality could reasonably be questioned. Defendant claims his

1 case shares similar circumstances with a fellow detainee, specifically regarding his choice to proceed
2 pro se and the resulting appointment of stand-by counsel, and that he is being treated differently by
3 Judge Leen than this allegedly similarly-situated detainee also appearing in front of Judge Leen.

4 This different treatment of Defendant from an unnamed, fellow detainee in allegedly “almost
5 the same exact position as Defendant” is no showing of bias.¹ Defendant appears to be unhappy with
6 Judge Leen’s stand-by counsel appointment, and analysis that Mr. Ericsson is fit for this
7 appointment. However, Defendant’s subjective and inflamed dissatisfaction with Judge Leen’s
8 decision is no grounds for disqualification: a judge’s prior adverse ruling is always insufficient to
9 demonstrate judicial bias. Taylor v. Regents of the Univ. of Cal., 993 F.2d 710, 712 (9th Cir. 1993).

10 Accordingly IT IS HEREBY ORDERED that Defendant’s Motion to Replace Trial Judge and
11 Magistrate Judge (#91) is **DENIED**. Trial commences, as stipulated by the parties, on February 20,
12 2018 at 9:00 AM in Courtroom 4B.

13 DATED this 8th day of February, 2018.

14
15
16 

17 Kent J. Dawson
18 United States District Court Judge
19
20
21
22
23
24

25
26 ¹ Additionally, Defendant complains Judge Leen granted this fellow detainee a “30 or 45 day continuance,”
implying he received no such a benefit. However, this Court has granted Defendant seven continuances– 598 days to date.